



**CITY OF KIRKLAND**

**City Manager's Office**

123 Fifth Avenue, Kirkland, WA 98033 425.587.3001  
[www.kirklandwa.gov](http://www.kirklandwa.gov)

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**MEMORANDUM**

**To:** Kurt Triplett, City Manager

**From:** Tracey Dunlap, Deputy City Manager  
Michael Cogle, Deputy Director of Parks & Community Services  
William Evans, Assistant City Attorney

**Date:** January 5, 2017

**Subject:** Totem Lake Purchase and Sale Agreement

**RECOMMENDATION:**

Council approves the purchase of Totem Lake from the King Conservation District and authorizes the City Manager to enter into a purchase and sale agreement substantially similar to the attachment.

**BACKGROUND DISCUSSION:**

Totem Lake Park is a 17-acre site located in the heart of the Totem Lake Urban Center. Owned by the King Conservation District (KCD) and co-managed by the City of Kirkland, the lake has been known by several names over the years, but became known as Totem Lake in 1973 after the opening of the nearby shopping mall. The property was donated to KCD in 1978 and in 1995 the City partnered with KCD to create trails, boardwalks, and historical and ecological interpretive features on the site.

In 2010, the City Council adopted Resolution R-4856, approving an Action Plan for revitalizing the Totem Lake Business District and directing City departments to reprioritize work tasks accordingly. In response, the Park Board in 2011 forwarded recommendations to the Council regarding potential park-related projects. One of these recommendations was for the City to develop a master plan for the Totem Lake Park property.

The Urban Land Institute, a non-profit organization comprised of land use and real estate experts, recommended to the City in 2011 that Totem Lake Park be developed as a catalyzing strategy to help create a "sense of place" in Totem Lake. Their report said "the Lake itself can become the heart of a redeveloping neighborhood and a place with which Totem Lake residents, existing and new, can truly identify." And in 2013 the City Council adopted the City's Work Program, which included emphasis on Totem Lake revitalization.

In 2013, the City Council also directed the Parks and Community Services Department to create a Totem Lake Park Master Plan. The City Council formally adopted the Totem Lake Park Master Plan in December 2013. The recently-adopted 2017–2022 Capital Improvement Program (CIP) provides funding of over \$7 million to begin implementation of the Plan. In addition, the CIP includes a variety of transportation projects in the Totem Lake area, recognizing that substantial new development is in the pipeline that is expected to be completed in the next few years.

The City has been in discussions with KCD since 2015 to acquire Totem Lake from the District. Owning the property would allow the City to carry out the improvements without on-going coordination with KCD and would facilitate applying for grant funds to carry out the projects by having site control.

Valuation of the Totem Lake property is a complex endeavor. In December 2015, KCD had an appraisal prepared that established a value of \$710,000 for the property. The City's review of that appraisal raised questions related to how existing restrictive covenants on the property and environmental constraints were recognized in that value. The City commissioned its own appraisal in July 2016 that established a value ranging from \$220,000 to \$300,000. Based on that appraisal, the City offered \$300,000 for the property. Given the wide divergence in the appraisals, KCD counter-offered to sell the property to the City for \$550,000 (see Attachment A – October 13, 2016 Letter from KCD). The District's offer represented a reduction from their appraised value to recognize avoided maintenance costs and proposed environment enhancements, but satisfied the Board of Supervisors belief that the District had a fiduciary duty to receive full and fair value for the District asset.

In recognition of the key role that Totem Lake plays in the City's plans for Totem Lake Urban Center and the value of having control of the site to carry out the City's planned projects, the City accepted KCD's offer (see Attachment B – October 26, 2016 Letter to KCD), subject to conditions including:

- Satisfactory clearance of the reversion clause in the deed restriction requiring consent of the prior property owner to "modify the ownership" of the property (see Attachment C – 1979 Statutory Warranty Deed and Exhibit).
- A portion of the sales price will be paid by agreeing that KCD will retain for its own use the Kirkland balance in the KCD Member Jurisdiction Grant Program of \$143,125.45. Note that these funds represent net accumulated KCD balances allocated to Kirkland over time, after grants to the City for Green Kirkland activities. The City will still be eligible for KCD funds in 2017 and beyond, so this use of the unspent funds does not negatively impact future KCD grants for Green Kirkland or other City purposes. Using the unspent funds in this way reduces the amount the City has to pay the KCD to approximately \$407,000.

Purchase of the lake was included by the Council in the recently adopted 2017-2022 CIP, with the remainder of the purchase price funded from park acquisition funds and surface water utility reserves (slightly more than \$200,000 each).

Negotiations between the City and KCD have resulted in Attachment D - Purchase and Sale Agreement (also Exhibit A to the resolution) that the KCD Board of Supervisors approved at their meeting of January 9, 2016. In addition to the terms above and the typical language in a purchase and sale agreement, there is substantial language related to Title Policy and Condition of Title (Section 4) that warrants further explanation.

The terms of the 1979 deed discussed earlier are further complicated by the apparent subsequent conveyance by the original grantor, G & B Estates, Inc., of the reversion rights to Caribou Development Corporation (CDC), neither of which are active corporations on the Secretary of State website. KCD has engaged a title company and their attorney is working with the City Attorney's Office to establish clear title after the Purchase and Sale Agreement is signed. Obtaining clear title will likely involve legal action and is an outstanding contingency that needs to clear for the transaction to close. The intent is for this process to eliminate the existing deed restrictions and replace them with the City's agreement to develop and maintain the property as a park and preserve wetlands and attendant wildlife to the extent consistent with human use of the park. In the event that the City does not comply with this new covenant, the property would revert to KCD.

It is also possible that the City could contemplate condemnation of the reversionary interest if the subsidiary corporations can't be found or are unwilling to change the reversion rights. The agreement includes a provision for this potential action and says that if condemnation results having to pay any entity for the value of the interest obtained, that amount will be deducted from the Purchase Price.

Staff is requesting that the Council authorize the City Manager to enter into a Purchase and Sale Agreement substantially similar to Attachment D, which will allow the work related to the title to proceed and a closing date to be set once the title work is completed.



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1107 SW Grady Way, Suite 130 • Renton, WA 98057 • Phone (425) 282-1900 • Fax (425) 282-1898 • [www.kingcd.org](http://www.kingcd.org) • [district@kingcd.org](mailto:district@kingcd.org)

October 13, 2016

Tracy P. Dunlap  
Deputy City Manager  
City of Kirkland  
123 5<sup>th</sup> Ave.  
Kirkland, WA 98033-6189

Dear Ms. Dunlap,

Please let us follow-up with you on your July email, the Brackett appraisal, and the City's offer to purchase KCD's Totem Lake property for \$300,000.

A reading of the assumptions, analysis, and conclusions of both the Brackett appraisal and the Strickland appraisal leads even the sophisticated reader to realize that ascertaining value is a complex and perhaps uncertain exercise.

In light of the complexity, we do not believe multiple divergent appraisal reports are helpful in reaching a single agreed-upon value. To reconcile these appraisals, we would need to agree on: date of value, expanded right of use analysis, wetland comparison data, zoning and regulatory requirements (present and anticipated future unadopted changes), future development assumptions, neighboring uses and entitlements, environmental and regulatory limitations, and so on.

While the differences in the appraisals have been the subject of discussion, no attempt has yet been made on behalf of the KCD to reconcile the two appraisal reports; nor is there confidence that a single agreeable value could be reached with so many variables. However, If the City of Kirkland would like to move in the direction of commissioning additional analysis, KCD would propose an additional scenario defining Totem Lake's value as a regional stormwater storage and treatment facility as was proposed in the 2014 retrofit study performed by the City under a Washington Department of Ecology grant.

The study found that for \$400,000 Totem Lake could be modified to accommodate substantially more stormwater by construction of a weir upstream of the Totem Lake outlet to enhance flow control and regulate storage in the lake. This project would control and partially treat stormwater runoff from 531 acres. In other words, such an approach would address much of the upstream retrofit needs in the 665 acre sub-basin. This was by far the cheapest project with the greatest impact on flow control by a huge

margin. A project like this could greatly enhance the value of upstream parcels being considered for redevelopment by partially or wholly addressing their NPDES stormwater requirements. Such capacity could either be sold or given as a development incentive to developers seeking to redevelop in the Totem Lake sub-basin.

The Totem Lake Mall Development Agreement, which was extended by the City in 2015, is an example of how much savings can be achieved by continuing to use Totem Lake for stormwater control and treatment. Allowing the Totem Lake Mall developer to develop under 1998 stormwater standards, which avoided on-site detention and infiltration, saved the developer approximately \$25 million for a 40 acre site. Multiply the savings across 531 acres, and add the saved value of land not dedicated to ponding, shows in a rough way the potential value to neighboring high value land if Totem Lake could continue to be used to address stormwater detention and treatment needs in the Basin.

The study recommended further discussions with Ecology to resolve certain permitting issues and impacts on wetlands before proceeding with design. Kirkland staff, at their April presentation to the KCD Board of Supervisors, verified that the City was continuing to work on developing the Totem Lake Park Stormwater Retrofit project, in addition to another stormwater diversion into Totem Lake to address local road flooding. We think the value of using Totem Lake in this way should be quantified if further appraisal work is necessary.

An alternative approach to continuing to develop and reconcile appraisal data is to agree that there is an acceptable range of value from which the negotiation could follow. The District and the District's appraiser stand by the District's appraisal at \$710,000. However, there is room for identifying middle ground. Certainly avoided maintenance costs and proposed environmental enhancements should be considered. In light of these and other considerations, the District offers to sell the Totem Lake property for \$550,000. The KCD Board of Supervisors believes that a sale at this price would satisfy the District's fiduciary duty to receive full and fair value for a District asset.

We look forward to further discussion with regard to the District's offer, and hope we can agree to move forward with the sale and transfer of this property as soon as possible.

Regards,

A handwritten signature in black ink, appearing to read "Dick Ryon". The signature is stylized with a large initial "D" and "R".

Dick Ryon  
Chair, King Conservation District Board of Supervisors





October 26, 2016

Richard Ryon  
King Conservation District Board of Supervisors  
1107 SW Grady Way, Suite 130  
Renton, WA 98057

RE: KCD Ref: 16-325 Totem Lake Appraisal

Dear Mr. Ryon,

Thank you for your letter of October 13, 2016. The City agrees with you that the assumptions and factors that could be considered in arriving at a value for the Totem Lake property, including the District's analysis of the value of Totem Lake as a regional storm water storage and treatment facility, are numerous and subject to differing interpretations. While the City believes the appraisal it obtained accurately reflects the value of the Totem Lake property given its limited development potential and the restrictive covenant, we concur that its value as a public facility and storm water asset can support a \$550,000 purchase price.

Therefore, the City accepts your offer to sell the Totem Lake property to the City for \$550,000.00, subject to the negotiation of reasonable and necessary terms of sale anticipated to include (but not limited to):

- A portion of the sales price paid by agreeing that KCD will retain for its use the Kirkland *Estimated Total Amount Available to Utilize for Grants or Services*, which was estimated in an e-mail from KCD to the Kirkland City Council dated May 9, 2016 at \$143,125.45 or the latest available figure; and
- Each party bearing the normal closing costs for such a transaction and its costs for negotiating a purchase and sale agreement.

One of the issues that will need to be addressed in those negotiations is how we are going to handle the reversion clause in the deed from G & B Estates, Inc. to King Conservation District, which provides that to "modify the ownership" of the property without consent will cause the property to revert to the grantor, its successor or designee. Given that G & B Estates no longer exists, and the City has been unable to locate a successor or designee, this appears to mean some type of legal action, probably a condemnation or quiet title, will be needed to address this issue. I mention this now because, while the City is certainly prepared to bear the costs of such an action, it appears some type of contingency will be needed in the purchase and sale agreement in case such an action was unsuccessful. I hasten to add I do not expect any difficulties but our fiduciary obligation to our residents requires that we plan for that possibility.

Toward negotiating that agreement, and using the potential dates and times proposed in Brandy Reed's email of October 14, 2016, City staff is available to meet with the District and its legal counsel on:

Friday November 4th, 10-11:30 AM or 2-3 PM

Monday November 7th, 10-11:30 AM or 2-3 PM

Wednesday November 9th, between 10 AM and 1PM

Please let me know which of the dates selected you prefer for our discussion. I, too, look forward to beginning that process so we can close this transaction as soon as possible.

Sincerely,

A handwritten signature in blue ink that reads "Tracey Dunlap". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Tracey Dunlap  
Deputy City Manager



Attachment C

SAFECO



SAFECO TITLE INSURANCE COMPANY  
1109 SECOND AVENUE, SEATTLE, WASHINGTON 98101  
TELEPHONE: 623-0870

THIS SPACE RESERVED FOR RECORDER'S USE

RECORDED THIS DAY

1979 AUG 31 AM 8 30

BY THE DIVISION OF  
RECORDS & ELECTIONS  
KING COUNTY

A-340843 1170  
\$400

Filed for Record at Request of

FILED FOR RECORD AT REQUEST OF  
PIONEER NATL. TITLE INS. CO.  
719 SECOND AVE.  
SEATTLE, WASHINGTON 98104

NAME \_\_\_\_\_

ADDRESS \_\_\_\_\_

CITY AND STATE \_\_\_\_\_

### Statutory Warranty Deed (CORPORATE FORM)

THE GRANTOR, G & B ESTATES, INC., a Washington corporation,  
for and in consideration of One and No/00 Dollars (\$1.00)  
in hand paid, conveys and warrants to KING COUNTY CONSERVATION DISTRICT, a Municipal Corporation  
the following described real estate, situated in the County of King, State of Washington:

Tract A, Correction Map of Totem Lake South, According to the  
Plat Recorded in Volume 110 of Plats, Pages 9, 10, & 11, in  
King County, Washington, and According to the Correction  
Plat Recorded in Volume 110 of Plats, Pages 92 & 93, in King  
County, Washington;

RECORDED THIS DAY  
AUG 31 3 34 PM '79  
THE DIVISION OF  
RECORDS & ELECTIONS  
KING COUNTY

PROVIDED THAT conveyance herein and hereunder is made specifically subject to  
those certain six restrictions set forth on Exhibit "A," which is attached  
hereto and incorporated herein for all purposes as if fully set forth  
hereon.

1% EXCISE TAX NOT REQUIRED  
King Co. Records Division

By J. Torckoff, Deputy

IN WITNESS WHEREOF, said corporation has caused this instrument to be executed by its proper officers  
and its corporate seal to be hereunto affixed this 30th day of June, 1979.

G & B ESTATES, INC.

By [Signature] President

By [Signature] Secretary

STATE OF WASHINGTON, } ss.  
County of KING

On this 30th day of June, before me, the undersigned,  
a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared  
William M. Vieser and Gordon A. Christopher  
to me known to be the President and Secretary, respectively, of  
G & B ESTATES, INC.,  
the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and  
voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that  
they authorized to execute the said instrument and that the seal affixed is the corporate seal of said  
corporation.

Witness my hand and official seal hereto affixed the day and year in this certificate above written.

Will Todd  
Notary Public in and for the State of Washington  
residing at Kirkland.



EXHIBIT "A"

7908311213

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1. Tract A is conveyed by Grantor and accepted by Grantee subject to all encumbrances and requirements of record, including but not necessarily limited to easements created benefitting Tract B, and Lots 1, 2, 3, 4 and 5 of the Plat of Totem Lake South, According to the Correction Plat Recorded in Volume 110 of Plats, Pages 92 & 93, in King County, Washington simultaneously with conveyance herein and hereunder. And

2. Grantee agrees to develop and maintain Tract A as a passive park, in perpetuity, preserving the wetlands and attendant wildlife to the maximum extent consistent with human use as a passive park. And

3. Grantee agrees to maintain and use the name "Totem Lake Park" in perpetuity. And

4. Grantee agrees to use no other name in conjunction with such park and Tract A, or any part thereof, or any feature or facility therein, PROVIDED that the Grantee may indicate its legal ownership of Tract A through signing and other appropriate means. And

5. Grantee agrees to seek those funds necessary, if any, to develop Tract A as a passive park at the earliest possible opportunity and continuously thereafter until Tract A is developed as a passive park. And

6. Grantee agrees to modify the ownership, uses, conditions and other terms of this Exhibit "A" respecting Tract A only with the express approval of Grantor, its successor(s) and/or its designee(s), SUBJECT TO REVERSION OF THE PROPERTY, IN WHOLE OR IN PART, to Grantor, its successor(s) and/or designee(s), as appropriate, but at the exclusive determination of such Grantor, successor(s) and/or designee(s), as appropriate, to accept or to refuse any such reversion, in whole or in part.



## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by and between the City of Kirkland, a municipal corporation of the State of Washington ("Buyer"), and the King Conservation District, a municipal corporation of the State of Washington and the owner of the real property hereinafter described ("Seller").

For and in consideration of the mutual covenants herein contained, the sufficiency of which is unconditionally acknowledged by Buyer and Seller, the parties hereby agree as follows:

1. Purchase of Real Property. Subject to City Council appropriation of funds, Buyer and Seller hereby agree to the purchase and sale of the real property described as follows:

Tract A, Totem Lake South, according to the plat thereof recorded in Volume 110 of Plats, pages 9 through 11, inclusive and Correction Map of Totem Lake South, according to the plat thereof recorded in Volume 110 of Plats pages 92 and 93, in King County, Washington;

Together with that portion of Totem Lake Way vacated by Ordinance 2463, recorded under recording number 7905230687.

("Property").

2. Purchase Price; Payment. The Purchase Price for the Property shall be Five Hundred Fifty Thousand and 00/100 Dollars (\$550,000.00). Seller is in possession of One Hundred and Forty Three Thousand One Hundred Twenty Five and 45/100 Dollars (\$143,125.45) in grant funds available to Buyer under Seller's Member Jurisdiction Grant Program, which upon Closing shall be retained by Seller and credited toward the Purchase Price. At or before Closing, Buyer shall deposit the remaining balance of the Purchase Price in the amount of Four Hundred and Six Thousand Eight Hundred Seventy Four and 55/100 Dollars (\$406,874.55) with the Escrow Holder.

3. Escrow Holder: Promptly following the full execution and acceptance of this Agreement, Buyer shall open an escrow with NexTitle, Bellevue, Washington (the "Escrow Holder"). A copy of this Agreement shall be provided to the Escrow Holder to advise the Escrow Holder of the terms and conditions hereof. Escrow Holder shall conduct the closing pursuant to the escrow instructions of the parties which shall be consistent herewith.

4. Title Policy and Condition of Title. Buyer will order a standard coverage preliminary commitment for title ("Title Report") from NexTitle immediately upon mutual execution and acceptance of this Agreement. Within sixty (60) days after receipt of the title report, Buyer shall notify Seller in writing what exceptions to title, if any, are objectionable and will not be accepted by Buyer. All other exceptions shall constitute permitted exceptions. If Buyer fails to provide Seller with timely notice of any objections to the exceptions to title, then all exceptions to title shall be considered permitted exceptions. Seller shall remove all exceptions that are not permitted exceptions prior to the closing date. However, if Seller is unable to remove any such exceptions prior to the closing date, this Agreement shall be deemed null and void unless the

time for closing is extended by mutual agreement of the Parties or the parties otherwise agree in writing to waive and accept any exception that cannot be removed from title. If additional exceptions arise between the date the report is ordered and closing, within thirty (30) after the receipt of any update to this report, the foregoing procedure will be used to address any such exceptions.

As a condition of closing, Seller shall also obtain the written consent required for this conveyance to occur without triggering a reversion, in whole or in part, from the entity or its successors in interest ("Grantee" under the Quitclaim Deed dated August 23, 1979 and recorded under King County Recording No. 7909040608, which deed is incorporated herein by this reference) from whom it is obligated to obtain such consent pursuant to Exhibit A to the Statutory Warranty Deed dated June 30, 1979 and recorded under King County Recording No. 7908311213 by which Seller acquired title to the Property (the "Statutory Warranty Deed"), which deed is incorporated herein by this reference.

Concurrently, Seller shall also obtain the written consent from Grantee to eliminate Exhibit A as an encumbrance on the Property to be conveyed to Buyer, excluding Paragraph 1 of Exhibit A to the Statutory Warranty Deed relating to encumbrances and requirements of record at the time the Property was conveyed to Seller, to be replaced with the following encumbrance, which shall be recited within the text of the Statutory Warranty Deed from Seller to Buyer and shall read as follows:

Pursuant to the authorization granted in the attached Consent, herein incorporated by reference, Exhibit A to the Statutory Warranty Deed dated June 30, 1979 and recorded under King County Recording No. 7908311213 is hereby eliminated and replaced with the following encumbrance:

1. Grantee agrees to develop and maintain the Property as a park, in perpetuity, preserving the wetlands and attendant wildlife to the maximum extent consistent with human use of the park, and
2. Grantee agrees to seek those funds necessary to continue development of the Property as a park when reasonable and appropriate.

Alternatively, Seller will obtain the reversionary interest and authority to modify Exhibit A from Grantee by quit claim deed and Seller will make such modifications as outlined above to be included in the deed to Buyer as provided above.

In the event Seller determines neither of the foregoing alternatives is possible, Buyer may at its discretion attempt to condemn the reversionary interest and any other interest held by Grantee. If Buyer's condemnation results in it having to pay any entity or individual for the value of the interest obtained, that amount will be deducted from the Purchase Price.

If Buyer and Seller are unable to eliminate and modify the foregoing encumbrance, this Agreement shall be deemed null and void unless the Parties otherwise agree in writing.

5. Closing. Title on closing to be conveyed to Buyer by statutory warranty deed shall be free and clear of all taxes, assessments, liens, and encumbrances, except for permitted exceptions, and shall be so insurable. The date of closing shall be the date the deed is recorded.



The deed shall be recorded when sale proceeds are available for Seller. Buyer shall be entitled to possession of the Property on closing. The closing of the sale of the Property shall be held at the Bellevue offices of NexTitle ("Escrow") no later than 60 days after all contingencies identified in this Agreement have been satisfied. This date may be extended by agreement of the parties which agreement shall not be unreasonably withheld.

Buyer and Seller will each pay customary costs and expenses of closing. Seller shall pay any cost or expense required to be paid in order to clear Seller's title consistent with the terms of this Agreement. Buyer shall be required to cooperate with Seller in a reasonable manner in Seller's efforts to obtain the Grantors' consent and approval of this conveyance. Buyer and Seller shall place with Escrow all instruments, documents, and monies necessary to complete the sale in accordance with this Agreement.

6. Access to Property. Buyer and its employees and agents shall have the right and permission from the date of this Agreement through closing date to enter upon the Property for inspection purposes, but Buyer will not conduct any tests at the Property that involve piercing the ground or structures.

7. Property Tax. Even though Buyer is exempt from property taxes, all property taxes applicable to the Property will be paid by Seller prior to closing or through Escrow. Immediately after closing, if any taxes have been paid in excess of what was required, the Buyer will advise King County to refund the excess taxes to Seller if refundable.

8. Condition of Property. All representations and warranties of Seller contained herein shall be true, accurate, and complete at the time of closing. The physical condition of the property at closing shall be the same as on the date of this Agreement.

8.1 Seller shall not enter into any lease, trust deed, mortgage, restriction, encumbrance, lien, license or other instrument or agreement affecting the Property without the prior written consent of Buyer from and after the date of this Agreement. Seller warrants as follows: that Seller is the sole legal owner of the fee simple interest in the Property and is not holding title as a nominee for any other person or entity; that no person or entity has a first right of refusal or option to purchase or other similar right to or interest in the Property; that no labor, materials or services have been furnished or will be furnished in, on or about the Property or any part thereof as a result of which any mechanics', laborers' or materialpersons' liens or claims might arise.

8.2 This offer is made with respect to the physical condition of the Property on an "as is and where is basis" as of the date of closing, provided that Buyer does not waive any claim it may now have or hereafter acquire against Seller based on, arising out of, or in any way related to toxic, dangerous, or hazardous waste or substance as the same may now or hereafter be defined by any applicable law or regulation, nor does Buyer release Seller from any liability to Buyer based upon, arising out of, or any way related to toxic, dangerous, or hazardous waste or substance as may hereafter be found and determined to have been on or within the Property as of the date of closing of this sale or earlier.

9. Seller's Knowledge. To the best of Seller's knowledge, the Property is not in violation of any law or regulation relating to the environmental conditions thereon and there is

no hazardous waste, toxic substance or pollutant, within the scope of any state, federal or local environmental statute or rule, on or in the vicinity of the Property or on any parcels of land which abut the Property to the best of Seller's knowledge. Further, to the best of Seller's knowledge there is no asbestos, PCB's or underground storage tanks located on the Property or which have been removed therefrom.

10. Remedies. If Seller reasonably concludes that Buyer is in breach of this Agreement, Seller's sole remedy shall be to terminate this Agreement by sending written notice to Buyer and Escrow. If Buyer reasonably concludes that Seller is in breach of this Agreement, Buyer shall have the right to either terminate this Agreement by sending written notice to Seller and Escrow or may instead maintain an action for specific performance (together with recovery of costs and attorney's fees incurred in such action). If an action or proceeding occurs between the parties seeking enforcement of any provision contained in this Agreement, the prevailing party in any such action or proceeding shall be entitled to reasonable attorney's fees and costs in addition to any other relief which a court of law having jurisdiction determines it is entitled to.

11. Notice. Any demand, request or notice which either party hereto desires or may be required to make or deliver to the other shall be in writing and shall be deemed given whether delivered by facsimile, delivered to the person, or three days after being deposited in the United States mail, addressed as follows:

To Seller:

King Conservation District  
Attn.: Executive Director  
1107 SW Grady Way, Suite 130  
Renton, WA 98057  
Ph. (425) 282-1900  
Fax. (425) 282-1898

To Buyer:

City of Kirkland  
Attn.: City Manager  
123 Fifth Avenue  
Kirkland, WA 98033  
Ph. (425) 587-3030  
Fax. (425) 587-3025

12. Binding. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto and shall inure to the benefit of them.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2017.

KING CONSERVATION DISTRICT

CITY OF KIRKLAND

By: \_\_\_\_\_  
Dick Ryon, Chair  
King Conservation District  
Board of Supervisors

By: \_\_\_\_\_  
Kurt Triplett, City Manager

Approved as to form:

\_\_\_\_\_  
City Attorney



RESOLUTION R-5233

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF KIRKLAND  
AUTHORIZING THE CITY MANAGER TO EXECUTE A REAL PROPERTY  
PURCHASE AND SALE AGREEMENT FOR TOTEM LAKE.

1 WHEREAS, in 2013 the Council adopted the City's Work Program,  
2 which included emphasis on Totem Lake revitalization and  
3 implementation of the Totem Lake Action Plan; and  
4

5 WHEREAS, the Totem Lake neighborhood is currently the City's  
6 largest employment center and the highest revenue generator of all  
7 Kirkland business districts; and  
8

9 WHEREAS, the Totem Lake Neighborhood contains the City's  
10 only Urban Center, a designation made by the State Growth  
11 Management Planning Council in 2003, which areas are a focus for  
12 regional growth, high density housing and employment; and  
13

14 WHEREAS, by 2030, Totem Lake is expected to grow from its  
15 present population of 5,544 to 9,800, double its housing units to 6,000  
16 and employment is expected to increase from 11,511 to 29,000; and  
17

18 WHEREAS, prioritizing the Totem Lake Park Master Plan and  
19 acquisition of the Totem Lake to serve this growth is appropriate; and  
20

21 WHEREAS, ownership of Totem Lake will enable the City to carry  
22 out these improvements without on-going coordination with the King  
23 Conservation District and will facilitate obtaining state and federal grants  
24 to implement these projects by securing site control.  
25

26 NOW, THEREFORE, be it resolved by the City Council of the City  
27 of Kirkland as follows:  
28

29 Section 1. The City Manager is hereby authorized and directed  
30 to execute on behalf of the City of Kirkland a Real Property Purchase  
31 and Sale Agreement for the Property substantially similar to that  
32 attached to this Resolution as Exhibit "A."  
33

34 Passed by majority vote of the Kirkland City Council in open  
35 meeting this \_\_\_\_ day of \_\_\_\_\_, 2017.  
36

37 Signed in authentication thereof this \_\_\_\_ day of \_\_\_\_\_,  
38 2017.

\_\_\_\_\_  
MAYOR

Attest:

\_\_\_\_\_  
City Clerk